

PATENT
454311-2232.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : WONG *et al.*
Serial No. : 10/699,550
Filing Date : October 31, 2003
Title of Invention : DIAGNOSTIC TEST FOR WEST NILE VIRUS
Group Art Unit : 1648
Examiner : McGaw, M.

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New York, NY 10151

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Date of Deposit: March 17, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: **Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Barnet Shindlman

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DECLARATION UNDER 37 C.F.R. § 1.132

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

WE, SUSAN J. WONG AND PEI-YONG SHI, DECLARE AND STATE THAT:

1. We are the co-inventors of the subject matter described and claimed in the present patent application.

2. A journal article entitled "A Recombinant Envelope Protein-Based Enzyme-Linked Immunosorbent Assay for West Nile Virus Serodiagnosis," Vector-Borne and Zoonotic Diseases, June 2002, Vol. 2, No. 2, Pg. 105-109 (hereinafter "Wang et al."), names seven authors: T. Wang, L.A. Magnarelli, J.F. Anderson, L.H. Gould, S.L. Bushmich, S.J. Wong, and E. Fikrig. As stated above, the co-inventors of the subject matter described and claimed in the

present invention are S.J. Wong and P. Shi. Thus, the authors of Wang et al. are not "others" as defined by 35 U.S.C. § 102(a) as to the inventive entity of this application, the inventive entity overlaps with the authors of Wang et al. ✓

3. As is known in the scientific community, persons are or are not included as authors on scientific articles for reasons that do not involve inventorship. Co-authors T. Wang, L.A. Magnarelli, J.F. Anderson, L.H. Gould, S.L. Bushmich, and E. Fikrig did not make an independent inventive contribution to the invention claimed in this application.

4. Thus, we are advised and therefore believe that since the authors of Wang et al. are not "others" as to the present inventive entity, this document is not available as a reference against the present patent application. We thus respectfully request that rejections based on this document be reconsidered and withdrawn.

5. We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the present application or any patent issued thereon.

Date: March 8, 2005

Susan J. Wong
SUSAN J. WONG

Date: 03/08/05

Pei Yong Shi
PEI-YONG SHI

**DECLARATION FOR PATENT APPLICATION AND POWER OF ATTORNEY**

(Under 37 CFR § 1.63; includes reference to PCT International Applications)

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention ENTITLED:

DIAGNOSTIC TEST FOR WEST NILE VIRUS

the specification of which:

- ☐ is attached hereto
☒ was filed on **October 31, 2003** as:
☒ United States Application Serial No. **10/699,550**
☐ as a National Phase or Continuation or Continuation-in-Part or Divisional of
PCT Application No. _____, filed _____
and designating the U.S., and published as _____ on _____
☐ with amendments through _____ (if applicable, give details).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT International application(s) designating at least one country other than the United State of America listed below and have also identified below any foreign application for patent or inventor's certificate or any PCT International applications designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) on which priority is claimed:

Prior Foreign/PCT Application(s) [list additional applications on separate page]:

Country (or PCT)Application Number:Filed (Day/Month/Year)

Priority Claimed:

YesNo☐
☐☐
☐

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States application listed below:

60/422,755

(Application Number)

OCTOBER 31, 2002

(Filing Date)

60/476,513

(Application Number)

JUNE 6, 2003

(Filing Date)

I hereby claim the benefit under Title 35, United States Code § 120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to

patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Prior U.S. (or U.S.-designating PCT) Application(s) [list additional applications on separate page]:

U.S. Serial No.: Filed (Day/Month/Year) PCT Application No. Status (patented, pending, abandoned)

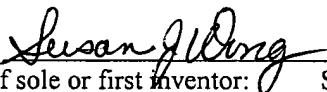
I hereby appoint William S. Frommer, Registration No. 25,506; Thomas J. Kowalski, Registration No. 32,147 and Frommer Lawrence & Haug LLP, or their duly appointed associate, my attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to file continuation and divisional applications thereof, to receive the Patent, and to transact all business in the Patent and Trademark Office and in the Courts in connection therewith, and to insert the Serial Number of the application in the space provided above, and specify that all communications about the application are to be directed to the following correspondence address:

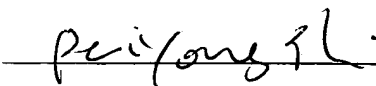
William S. Frommer, Esq.
c/o FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue
New York, NY 10151

Direct all telephone calls to: (212) 588-0800
to the attention of: William S. Frommer

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

INVENTOR(S):

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Citizenship: USA

Post Office Address(es) of inventors [if different from residence]: **SAME**